HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32(2) (b)

Description of the Case

C-482 no. 340 of 2006
Ratan Kumar Srivastava
Vs.
State & Another

Approved for reporting
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Not approved for reporting

Date of decision 22.12.2006

Initials of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 340 OF 2006

Ratan Kumar Srivastava,
S/o Late Shri Brij Bihari Srivastava,
R/o 6/48D, Pleasant Valley,
Rajpur Road, Police Station- Rajpur,
Dehradun. .....Applicant.

Vs.

1. State of Uttaranchal through Principal Secretary of Homes, Dehradun.
2. Shri Diptiman Roy Wardhan, S/o late Shri Dhiresh Chandar Roy Wardhan, 6/48D Pleasant, Valley, Rajpur Road, Dehradun, at present 59, Sunita Apartment G.D. Somani Road, Kalf Pared, Kolaba, Mumbai. .....Opp. Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri Sandeep Tandon, counsel for the applicant, Ms. Prabha Noliyal, counsel for the opposite party no. 2 and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the order dated 8th May, 2006 passed by the Judicial Magistrate Ist, Dehradun in Criminal Case No. 1251 of 2006 *State Vs. Ratan Kumar Srivastava* under Section 420, 467, 468, 471 472 IPC and for quashing the charge-sheet dated 3rd May, 2006 submitted by Police Rajpur, District- Dehradun in Case Crime No. 5 of 2006 and also for quashing the entire proceedings of

Criminal Case No. 1251 of 2006 State Vs. Ratan Kumar Srivastava based on charge-sheet submitted by Police in Case Crime No. 5 of 2006.

3. Briefly stated, according to the case of the applicant, the applicant is a tenant of the premises House No. 6 /48 D Pleasant Valley, Rajpur Road, Police Station Rajpur, Dehradun. The respondent no. 2 is the owner of the property.

4. Counsel for the applicant has referred to the Rent Agreement, which shows that monthly rent of the premises shall be Rs. 5,000/- per calendar month excluding water and electricity charges along with the security deposit of Rs. 11,000/-. Relevant paragraphs 2 and 3 are quoted below:

> "2. *This is agreed monthly rent of the said premises shall be Rs. 5,500/- per calendar month excluding water charges and electricity charges, at the maximum rate charged to the first party by the electricity department second party shall paid all electric charges.*
>
> 3. *That the second party has already paid to the owner/firstly a sum of Rs. 11000/- (Rupees eleven thousand only) as security deposit which amount shall be refundable on the expiry or earlier termination of the tenancy and upon handing over clear vacant physical possession of the said premises back to the owner by the tenant/ second party in as good condition as is being hereby let out after*

adjustment of all arrears of rent charges, expenses of damages, if any."

5. Counsel for the applicant has submitted that respondent no. 2 wanted to evict the applicant from the above said property and hence stopped accepting the rent.. the suit has been filed by the applicant on 25.04.2005 being Original Suit No. 24 of 2005, where the applicant has claimed the following relief:

"It is, therefore, PRAYED that the following relief be granted in favour of the plaintiff and against the defendant:-

A) That the defendant, his agents, employee etc. etc. be restrained through permanent injunction to not to dispossess the plaintiff from the property in suit forcibly and without due course of law.

B) *Full cost of the suit be awarded to the plaintiff.*

C) Any other relief which the Hon'ble Court deems fit be also awarded in favour of the plaintiff."

6. The Civil Judge has granted injunction to the following effect:

''प्रार्थना पत्र 6ग पर सुना गया शपथपत्र 7 ग व उसके संलग्नकों का परिषीलन किया गया जिससे वादी प्रष्नगत में प्रतिवादी का बतौर किरायेदार काबिज प्रतीत होता है। ऐसी परिस्थिति में यदि किसी अन्तरिम व्यादेष के अभाव में प्रतिवादी उसे प्रष्नगत सम्पत्ति से विधि विरूद्ध रूप से बेदखल हकर देने में सफल हो जाता है तो वाद का उद्देष्य विफल होने की सम्भावना

है। अतः नोटिस विरूद्ध प्रतिवादी वास्ते आपत्ति निस्तारण प्रार्थना पत्र 6ग दिनांक 9.5.05 नियत करते हुए जारी किये जाये। नियत की जा रही तिथि तक प्रतिवादी को प्रष्नगत सम्पत्ति से वादी को विधिविरूद्ध रूप से बेदखल करने से निषिद्ध किया जाता है?।''

7. A written statement has also been filed by the respondent no. 2 where, he has admitted that there was a relationship of landlord and tenant and the tenant agreed to pay a sum of Rs. 5,5000/- per month. Paragraph 2 to that effect is quoted below:

''2. यह कि वादपत्र की चरण संख्या – 2 में यह स्वीकार है कि वादी प्रतिवादी की ओर से अंकन 5,500/– रूपये प्रतिमाह की दर से माह –दर–माह का किरायेदार आबाद रहा है। इस किराये के अतिरिक्त जलकर व विद्युत व्यय वादी द्वारा देय रहा है। वास्तविकता अतिरिक्त विवरण में प्रदर्षित की जायेगी।''

8. Counsel for the applicant has pointed out that on 21st January, 2006 i.e. after filing of the suit and obtaining the injunction order, First Information Report was lodged under Section 420, 467, 468, 471, 472 IPC.

9. Counsel for the applicant has submitted that without application of mind, charge sheet has been submitted and on the basis of the said charge sheet, the trial Court has taken cognizance, which is an abuse of the process of Court.

10. A perusal of the First Information Report shows that a forged agreement has been prepared by the applicant.

11. I have perused the written statement filed in the case, where it has been admitted that the applicant is the tenant at the rate of Rs. 5,500/-

12. In the agreement itself, it has been mentioned that the tenancy will be on a sum of Rs. 5,500/-

13. Similar statement has been made by the respondent no. 2, where is paragraph 14 it has been stated as under:

> ''14– यह कि प्रतिवादी ने वादी को दिनांक 10–03–2003 को वादग्रस्त सम्पत्ति अंकन 5,500/– रूपये प्रतिवाम की दर से दिनांक 10–02–2004 तक किराये पर दी थी। इस किराये के अतिरिक्त वादी ने जलकर व विद्युत व्यय देना था। सम्पत्ति रिक्त करने की धरोहर के रूप में वादी ने प्रतिवादी को अंकन 11,000/– श रूपये की धनराशि प्रदान की थी। वादी ने दिनांक 10–02–2004 तक सम्पत्ति को रिक्त करके उसका अध्यासन प्रतिवादी को देना था।''

14. However, in paragraph 15, the respondent no. 2 has stated that on 10th March, 2003 the applicant has brought the agreement, but he was not agreed on the terms and conditions and therefore, the controversy has already been raised in the suit itself as will appear from paragraph 15 of the written statement. The same is quoted below:

> ''15–यह कि वादी ने यह संविदा दिनांक 10–03–2003 का निर्माण किया था और यह लेकर प्रतिवादी के पास हस्ताक्षर हेतु उपस्थित हुआ था। प्रतिवादी ने उक्त किराया संविदा दिनांक 10–03–2003 की शर्तो से इन्कार कर दिया था और

उस पर हस्ताक्षर करने से इन्कार कर दिया था। ऐसा प्रतीत होता है कि वादी ने उक्त संविदा दिनांक 10–03–2003 पर प्रतिवादी के हस्ताक्षर कर लिये हैं और प्रतिवादी के हस्ताक्षरों की कूटरचना की ली तथा उसको निजी स्वार्थ में प्रयोग कर लिया है। वादी ने भारतीय दण्ड विधान के प्राविधानों का उल्लंघन कर दिया है।''

15. Counsel for the applicant has referred ***Indian Oil Corporation Vs. NEPC India Ltd. and others (2006) 3 SCC (Cri) 188,*** where the Apex Court has held as under:

"10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged."

16. Counsel for the applicant has also referred ***Uma Shankar Gopalika Vs. State of Bihar and another 2006 (2) SCC Page 49,*** where it has been held as under:

"7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."

17. In view of the aforesaid judgment, counsel for the applicant has submitted that it was an abuse of the process of Court inasmuch as it was a dispute between the landlord and tenant and as such the criminal proceedings are not maintainable.

18. The Hon'ble Supreme Court in the case **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. page 705** has held as under:-

"*Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and*

documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complaint and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence prima facie committed by all or any of the accused."

19. Counsel for the respondent no. 2 has referred judgment of ***Central Bureau of Investigation Vs. Ravi Shankar Srivastava, IAS and another (2006) 3 SCC (Cri) 233,*** where it has been observed as under:

"10. As noted above, the powers possessed by the high Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. ……..If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, whoever, necessary that there should be meticulous

analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole."

20. Counsel for the respondent no. 2 has further referred ***Lalmuni Devi Vs. State of Bihar & Ors. JT 2001(1) SC 150,*** where it has been observed as under:

"6. Mr. Sinha submitted that the impugned order was unsustainable. He submitted that facts make out a civil wrong as well as a criminal liability. He submitted that merely because civil action can be taken does not mean that a criminal complaint is not maintainable. In support of his submission he relied upon the case of Trisuns Chemicals Industry v. Rajesh Agarwal and Ors. reported in [JT 1999 (6) 618]. In this case, the agreement between the parties contained an Arbitration Clause. This Court held that merely because the dispute could be referred to arbitration it was not an effective substitute for a criminal prosecution when the act also made out an offence.

8. There could be n dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground

that it was a civil wrong the criminal prosecution could not have been quashed.

21. So far as ***Central Bureau of Investigation Vs. Ravi Shankar Srivastava, IAS and another (supra)*** is concerned, the matter relates to the C.B.I inquiry and the same is not applicable in the present case. It has further been held in the aforesaid case that if the complaint does not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code of Criminal Procedure.

22. So far as ***Lalmuni Devi Vs. State of Bihar & Ors. (supra)*** is concerned, it has been held that merely civil claim is maintainable, it does not mean that criminal complaint cannot be maintained. The facts of the aforesaid case are fully different inasmuch as civil suit was already pending and the same question of tenancy rights has been raised and therefore, on the same cause of action, the criminal proceedings having been initiated, which cannot be said to be justified and the complaint does not make out a case of taking cognizance subsequently in criminal proceedings.

23. Considering all the aspects of the matter since the relationship of the landlord and tenant is admitted and the rent is also admitted, entire matter can be investigated in the Civil Suit itself and in case the civil Court has reason to believe that the agreement is fictitious, and has been forged the Civil Court has absolute

power to refer the matter to the criminal Court for taking appropriate action in the matter.

24. It is a case, where there will be complete harassment to the parties as such it is a fit case, where the charge sheet dated 03.05.2006, F.I.R. dated 21.01.2006 and the summoning order dated 08.05.2006 are liable to be quashed.

25. Subject to the aforesaid observation made above with regard to the maintainability of the criminal proceedings at the appropriate forum, the application filed under section 482 of the Code of Criminal Procedure is allowed.

(Rajesh Tandon, J.)

22.12.2006

Rathour